

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JACQUELINE D. BERRY,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A.No. 06-217-GMS
	:	
STATE OF DELAWARE,	:	
DIVISION OF CHILD SUPPORT,	:	
	:	
Defendant.	:	

**DEFENDANT’S AMENDED¹ MOTION TO STRIKE PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT**

Defendant hereby moves to strike plaintiff’s motion for summary judgment as it was served and filed in violation of the Scheduling Order. In support of this application, the following is shown:

1. On March 31, 2006, plaintiff commenced this *pro se* action by filing a complaint. (D.I. 1) On August 1, 2006, plaintiff was permitted to amend her complaint and on August 4, 2006, defendant filed an answer to the amended complaint. (D.I. 7, 9) On August 30, 2006, the Court entered a Scheduling Order. The scheduling order provided a deadline of May 2, 2007, for summary judgment motions. (D.I. 10, ¶ 5)

2. On May 2, 2007, defendant moved for summary judgment in accordance with the Scheduling Order. (D.I. 24, 25) On May 30, 2007, defendant

¹ Defendant’s motion to strike is amended to reflect that plaintiff’s motion and Opening brief had been filed in the Clerk’s office on June 19, 2007, but was docketed on July 5, 2007. (D.I. 29)

notified the Clerk's office that it was waiving its right to file a reply brief as plaintiff had not filed and served an answering brief. (D.I. 26)

3. On June 5, 2007, the Court ordered the plaintiff to answer the defendant's motion for summary judgment within 10 days and the compliance date was set to be June 15, 2007. (D.I. 27) On June 20, 2007, defense counsel received documents entitled: Plaintiff's Motion for Summary Judgment, Plaintiff's Opening Brief In Support of Summary Judgment and a number of attached documents. (D.I. 29)

4. Paragraph 5 of the Court's Scheduling Order of August 30, 2006 provides: "All summary judgment motions, with accompanying briefs and affidavits, if any, shall be served and filed on or before May 2, 2007." (D.I. 10) Plaintiff has not requested leave to file a summary judgment motion thereafter. Accordingly, plaintiff's motion for summary judgment is in violation of the Court's Scheduling Order. "While pro se litigants in general deserve more lenient treatment than those represented by counsel, all litigants, including pro ses, have an obligation to comply with Court orders. When they flout that obligation, they, like all litigants, must suffer the consequences of their actions." *McDonald v. Head Criminal Court Supervisor Officer*, 850 F.2d 121, 124 (2d Cir.1988). Aside from the issue of plaintiff's failure to follow the Scheduling Order, plaintiff has failed to comply with this Court's June 5, 2007 Order to Respond to Defendant's Summary Judgment motion by June 15, 2007

For the above reasons, defendant requests that the Court strike plaintiff's motion for summary judgment and find that plaintiff has failed to respond the defendant's summary judgment motion.

Respectfully submitted,

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Marc P. Niedzielski
Marc P. Niedzielski (#2616)
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DATED: July 6, 2007

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JACQUELINE D. BERRY,	:	
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Plaintiff,	:	
	:	
v.	:	C.A.No. 06-217-GMS
	:	
STATE OF DELAWARE,	:	
DIVISION OF CHILD SUPPORT,	:	
	:	
Defendant.	:	

ORDER

IT IS SO ORDERED This ____ day of _____, 2007

that the defendant's motion to strike plaintiff's motion for summary judgment is GRANTED and the plaintiff has failed to comply with the Court's June 5, 2007 Order to respond to defendant's motion for summary judgment.

Chief Judge of the United States District Court

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IN AND FOR THE DISTRICT OF DELAWARE**

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STATE OF DELAWARE,	:	
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	:	
Defendant.	:	

CERTIFICATE OF MAILING AND/OR DELIVERY

The undersigned certifies that on July 6, 2007, he caused the attached document to be delivered to the following person postage prepaid via First Class Mail:

NAME AND ADDRESS OF RECIPIENT(S):

Jacqueline D. Berry
20 Hickory Lane
Dover, DE 19904

/s/ Marc P. Niedzielski
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